

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 712 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SITARAM DIPCHAND MARATHA

Versus

INDIAN EXTRACTION LIMITED,

Appearance:

MR DEEPAK M SHAH for Petitioner

MR DM THAKKAR for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/09/96

ORAL JUDGEMENT

1. The petitioner who was a badli worker in the establishment of the respondent filed this writ petition before this court challenging thereunder the award of the Labour Court, Rajkot in (LCS) No.275/77 dated 19th May, 1983 under which the reference which has been made by the Government in respect of the Industrial dispute raised by him has been dismissed. However, the departmental inquiry was found to be defective and the employer has to

prove the charges before the Labour court. The order of dismissal was given effect from the date of the award and the respondent employer was ordered to pay lumpsum of Rs.3000/- only as interim backwages to the workman from the date of dismissal till the date of the award.

2. The only contention made by the learned counsel for the petitioner was that the penalty of the dismissal was highly excessive or disproportionate to the guilt of the workman, and as such, this Court should interfere in the award made by the Labour Court. The learned counsel for the petitioner further contended that the charge of throwing stone to the Officer by the petitioner was not of such a nature which justifies the penalty of dismissal. Relying on two decisions of the Supreme Court in the case of Ved Prakash vs. M/s. Delton Cable India (P) Ltd. reported in AIR 1984 SC 914 and in the case of Palghat BPL & PSP Thozhilali Union vs. BPL India Ltd. reported in 1995(6) SCC 237, the counsel for the petitioner contended that the charges in those cases against the workman were much more serious than the charges which are there in the present case against the petitioner, but the penalty of dismissal in those cases were considered to be excessive.

3. On the other hand, Shri D.M. Thakker the counsel for the respondent contended that the petitioner was a badli workman and the conduct of throwing stone by such a person on the Officer was a serious misconduct. It has further been contended that the petitioner was only badli workman and it is a case of striking out his name from the list of badli workers. The petitioner was not in regular employment, but he was given the employment as and when some work was available. Looking to the nature of the employment of the petitioner and the misconduct, the penalty of removing his name from the list of badli workers was just and reasonable. It has next been contended that in the matter of the punishment to be given to a delinquent workman this court has no power of judicial review. Reference in this respect has been made to the two decisions of the Supreme Court in the case of State Bank of India vs. Samendra Kishore reported in JT 1994 (1) SC 217 and B.C. Chaturvedi vs. Union of India reported in JT 1995 (8) SC 65.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The Labour court has given a finding of fact that the petitioner was a workman. The inquiry which has been held against the petitioner was found to be defective by the Labour court and the respondent management was given

an opportunity to prove the charges before it. The evidence has been produced by the parties and the Labour court has reached to the conclusion that the charges framed against the petitioner has been proved. The Tribunal has the power to give appropriate penalty to the petitioner under sec. 11A of the Act, 1947 and on the basis of the material on the record it has considered the penalty of dismissal to be appropriate. This court will not act as an appellate authority above the said decision. I find sufficient merits in the contention of the counsel for the respondent that in the matter of punishment to be given to the delinquent workman for a proved misconduct, this court has no power of judicial review. In the case of State Bank of India vs. Samendra Kishore (supra) the Supreme Court has held that sitting under Article 226 of the Constitution of India this Court has no power or judicial review to substitute its own punishment for the punishment which has been given to the delinquent employee for a proved misconduct. These are the matters within the jurisdiction of the disciplinary, appellate authority or in the case of the workman in the discretion of the Tribunal or the Labour court to which the reference has been made and normally, this Court should not interfere in the matter. In the case of B.C. Chaturvedi vs. Union of India (supra) the Supreme Court has held that where the punishment which has been given to the delinquent employee is found to be shocking to the judicial conscience of the Court in such cases the court may interfere with the punishment and may substitute its own punishment by giving cogent reasons or may remit the matter back to the authority. In the two decisions which have been cited by the learned counsel for the petitioner though the misconduct alleged against the workman may be more serious nature than what it is alleged in the present case, but a distinguishable feature is that the petitioner was a badli workman. In case the badli workman acts in such a manner and behaviour then the appropriate penalty would have been of dismissal. Moreover, when the Tribunal itself has considered the dismissal to be appropriate penalty, I fail to see any illegality therein. Looking to the fact that the petitioner was a badli worker and not in regular employment of the respondent, this penalty cannot be said to be shocking to the judicial conscience of this Court. No interference in the award of the Labour court is called for by this Court. The Labour court has passed the just and reasonable order.

5. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands

vacated.

zgs/-